



TOWN OF UNDERHILL

Development Review Board

KURT THOMA & RACHEL FRAUMANN
CONDITIONAL USE: VARIANCE/WAIVER REQUEST HEARING
Docket #: DRB-19-07

Applicant(s):	Kurt Thoma & Rachel Fraumann
Consultant:	Justin Willis (Wastewater Plan)
Property Location:	43 Ellsworth Meadow Lane (RA028)
Acreage:	± 1.04 Acres
Zoning District(s):	Mt. Mansfield Scenic Preservation

Project Information:	The Applicants are proposing to construct two decks, with associated stairs, as well as expand the structure from one and half (1 ½) floors to two (2) floors. Since the structure is entirely within the property's setbacks (see Exhibit O), any increase in volume, or any increase to the structure's footprint, including attached accessory structures like decks, requires conditional use review since the project is considered expanding a nonconforming structure.
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2018 UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS RELEVANT REGULATIONS:

- Article II, Table 2.6 – Mt. Mansfield Scenic Preservation District (pg. 21)
 - Article III, Section 3.2 – Access (pg. 30)
 - Article III, Section 3.7 – Lot, Yard & Setback Requirements (pg. 38)
 - Article III, Section 3.8 – Nonconforming Lots (pg. 39)
 - Article III, Section 3.9 – Nonconforming Structures (pg. 40)
 - Article III, Section 3.11 – Outdoor Lighting (pg. 41)
 - Article III, Section 3.13 – Parking, Loading & Service Areas (pg. 44)
 - Article III, Section 3.14 – Performance Standards (pg. 46)
 - Article III, Section 3.17 – Source Protection Areas (pg. 55)
 - Article III, Section 3.18 – Steep Slopes (pg. 56)
 - Article III, Section 3.19 – Surface Waters & Wetlands (pg. 63)
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 - Article V, Section 5.1 – Applicability (pg. 112)
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- a. Exhibit A - Thoma/Fraumann Conditional Use Review Staff Report
- b. Exhibit B - Thoma/Fraumann (EM043) Conditional Use Review Hearing Procedures
- c. Exhibit C - Development Review Application
- d. Exhibit D - Responses to Development Review Application Questions
- e. Exhibit E - Zoning Permit Application (B-19-23a)
- f. Exhibit F - Zoning Permit Application (B-19-23b)
- g. Exhibit G - Notice to BFP
- h. Exhibit H - Certificate of Service
- i. Exhibit I - Floor Plans
- j. Exhibit J - Elevations
- k. Exhibit K - Recorded Seasonal Camps
- l. Exhibit L - Wastewater System & Potable Water Supply Permit (WW-4-5075)
- m. Exhibit M - Wastewater System & Potable Water Supply Site Plan
- n. Exhibit N - Wastewater System Details
- o. Exhibit O - Site Plan with Proposed Additions, Waiver & Variance Limitations
- p. Exhibit P - Site Plan with Setback Measurements
- q. Exhibit Q - Tax Map Discrepancy

COMMENTS/QUESTIONS

1. **TABLE 2.6 – MT. MANSFIELD SCENIC PRESERVATION DISTRICT:** The Board should take notice during the site visit regarding the scenic vistas.
2. **SECTION 3.2 – ACCESS:** The property contains a recorded restriction in the land records that requires the Development Review Board to approve any conversion of the seasonal camp to a year-round residence. The Applicants are **NOT** proposing to convert the seasonal camp at this time. Had the Applicants proposed a conversion of use, Ellsworth Meadow Lane would have to be upgraded in conformance with the Road Ordinance.
3. **SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS:** A dimensional waiver may be approved by the Board “to allow for limited additions to or enlargements of nonconforming structures or structures on nonconforming lots” (§ 3.7.E.1).
4. **SECTION 3.8 – NONCONFORMING LOTS:** The Board may reduce the district setback requirements in accordance with Article V “as necessary to allow for the development of a pre-existing nonconforming lot, if the Board determines that the lot cannot otherwise be developed in conformance with the regulations.”
5. **SECTION 3.18 – STEEP SLOPES:** During the site visit, the Board should take notice if the area around the seasonal camp is flat, thereby not needing to apply the standards under this Section. Should steep slopes and very steep slopes exist in the project area, the exemption under § 3.18.B.1.e likely applies since the construction of the decks and stairs (accessory structures) are under 500 ft.
6. **SECTION 5.3.B.6 – LANDSCAPING & SCREENING:** The Board should take note of the landscaping & screening techniques of other properties in the areas to determine if any measures under this section should be taken.
7. **SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL:** The Board typically requires as a condition of approval that the Applicants adhere to the guidelines set out in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control.

8. **SECTION 5.5.B.2 – APPLICABILITY OF WAIVER REQUEST:** A waiver may be approved in four situations. The proposed project seemingly qualifies under two of the four situations below:
 - a. To allow for the reasonable development and use of a pre-existing nonconforming lot.
 - b. To allow for additions or improvements to a pre-existing nonconforming structure.
 9. **SECTION 5.5.B.4 – WAIVER REQUEST ELEMENTS:** The Board shall find that the proposed project satisfies four elements prior to issuing a waiver. When reviewing the four elements, the Board should take note of the following elements as it relates to the project:
 - a. *Element 1* – No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.
 - b. *Element 3* – The waiver represents the minimum setback reduction necessary to allow for the proposed development.
 10. **SECTION 5.5.C.2 – VARIANCE REQUEST ELEMENTS:** The Board shall find that the proposed project satisfies five elements prior to issuing a variance. When reviewing the five elements, the Board should take note of the following elements as it relates to the project:
 - a. *Element 2* – Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property.
 - b. *Element 3* – The unnecessary hardship has not been created by the applicant or appellant.
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STAFF FINDINGS OF RELEVANT SECTIONS

ARTICLE II – ZONING DISTRICTS

	Mt. Mansfield Scenic Preservation		Previously Proposed Single-Family Dwelling	Proposed Dwelling with Decks
Lot Size:	10.00 Acres		1.04 Acres	
Frontage:	400 ft.		±348 ft.	
Setbacks:	Principal	Accessory	Source: Site Plan (Exhibit P)	
• Front South	30 ft.	30 ft.	±31	±32 ft.
• Side 1 West	75 ft.	20 ft.	±278 ft.	±276 ft.
• Side 2 East	75 ft.	20 ft.	±24 ft.	±24 ft.
• Rear North	75 ft.	20 ft.	±152 ft.	±143 ft.
Max. Building Coverage:	25%		Assumed Met	
Max. Lot Coverage:	50%		Assumed Met	
Maximum Height:	35 ft.		Assumed Met	

TABLE 2.3 – MT. MANSFIELD SCENIC PRESERVATION DISTRICT

PG. 21

Purpose Statement: The purpose of the Scenic Preservation District is to protect the scenic vistas along Pleasant Valley Road. This district includes upland areas with access and/or development constraints, and valley area with access onto Pleasant Valley Road. The goal of this is achieved by allowing compatible lower densities of development or clustered development that maintains Underhill's rural character while protecting the views along Pleasant Valley Road.

- Adverse impact to the scenic vistas along Pleasant Valley Road are not anticipated. The Board should take notice during the site visit regarding the scenic vistas.
- The existing structure is in a lower-density neighborhood (Ellsworth Meadow Lane).
- The proposed deck additions, as well as the addition of a full second floor to the existing structure, is within the east, side setback requirement (see Exhibit O), and is therefore, expanding a nonconforming structure (see Section 3.9 Nonconforming Structures below).
- The proposed project (deck and the addition of a full second floor to the existing structure) requires a dimensional waiver & variance.
- The existing lot does not conform to the lot size requirement, and is therefore, a preexisting nonconforming lot (see Section 3.8, Nonconforming Lots below).

ARTICLE III – GENERAL REGULATIONS

SECTION 3.2 – ACCESS

PG. 30

- The subject lot has access to Ellsworth Meadow Lane, a Private Road.
- While the lot is nonconforming, no modifications to the existing access way are being proposed, nor does the proposed project require modifications to the existing access way.
 - *Note:* The property contains a recorded restriction in the land records that requires the Development Review Board to approve any conversion of the seasonal camp to a year-round residence. The Applicants are **NOT** proposing to convert the seasonal camp at this time. Had the Applicants proposed a conversion of use, Ellsworth Meadow Lane would have to be upgraded in conformance with the Road Ordinance.

- *Note:* The existing shared driveway traverses the lot in various locations, as well as straddles the south property line, and therefore, is pre-existing nonconforming.
- *Note:* The Board has authority to require the applicants to relocated the existing access way if necessary per Section 3.2.D.4. Any relocation of the access way requires an access permit.
- In regards to § 3.2.C.3, requiring an access permit for this project proposal is unnecessary.
- Since no modifications to the existing driveway are being proposed, review of § 3.2.D is unnecessary.

SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS

PG. 38

- The proposed decks will be attached to the single-family dwelling, the only principal structure/use on the lot.
- The proposed decks, as well as expansion of the second floor, will not satisfy the east, side property setback requirement, and therefore, a dimensional waiver & variance is required (see Section 5.5.C below).

SECTION 3.8 – NONCONFORMING LOTS

PG. 39

- The Board may reduce the district setback requirements in accordance with Article V “as necessary to allow for the development of a pre-existing nonconforming lot, if the Board determines that the lot cannot otherwise be developed in conformance with the regulations.”
 - Due to several site constraints (e.g. an undersized lot, the proposed septic system, and the shared driveway), the ability to construct a conforming structure is limited (see Exhibit O).

SECTION 3.9 – NONCONFORMING STRUCTURES

PG. 40

- The preexisting, nonconforming seasonal dwelling (camp) will remain in the same footprint; however, the Applicants propose to construct attached decks, as well as enlarge the second floor.
- Typically, nonconforming structures cannot be expanded; however, the Board may grant a dimensional waiver & variance to expand a nonconforming structure in accordance with Article V.

SECTION 3.11 – OUTDOOR LIGHTING

PG. 41

- The Applicants have advised that should any new lighting be added, it will be downcast and shielded (see Exhibit D).

SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

PG. 44

- The proposed decks and second floor expansion should not adversely affect parking.
- *Note:* The ULUDR does not provide a parking requirement for seasonal dwellings.

SECTION 3.14 – PERFORMANCE STANDARDS

PG. 46

- The proposed decks and expanded second floor, which are associated with a seasonal camp, and is consistent with the other uses in the area, is not anticipated to create any of the situations/circumstances enumerated within this Section (specifically § 3.14.B).

SECTION 3.17 – SOURCE PROTECTION AREAS

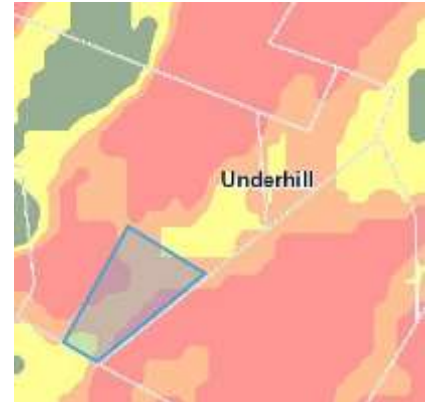
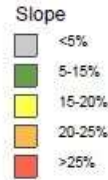
PG. 55

- The subject lot is not located within any Source Protection Areas.

SECTION 3.18 – STEEP SLOPES

PG. 56

- The ANR Atlas depicts the entire property as being in steep slopes (15%-25%) or very steep slopes (>25%) (see directly to the right).
- During the site visit, the Board should take notice if the area around the seasonal camp is flat, thereby not needing to apply the standards under this Section.
- Should steep slopes and very steep slopes exist in the project area, the exemption under § 3.18.B.1.e likely applies since the construction of the decks and stairs (accessory structures) are under 500 ft.



SECTION 3.19 – SURFACE WATERS & WETLANDS

PG. 63

- The ANR Atlas does not depict any surface waters or wetlands on the property.

SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

PG. 68

- A wastewater permit has been obtained prior to the submittal of this application, before the Applicants contemplated constructing the decks and enlarging the second floor.
- The Applicants obtained a wastewater permit (Permit #: WW-4-5075) for the existing seasonal camp (see Exhibit L), which was issued on July 20, 2018.

ARTICLE V – DEVELOPMENT REVIEW

SECTION 5.1 – APPLICABILITY

SECTION 5.1.A – TYPE OF REVIEW REQUIRED

PG. 112

- Conditional use review is required in accordance with Sections 3.7.E.1 and 3.9.

SECTION 5.1.B – COORDINATION OF REVIEW

PG. 112

- Does not apply.

SECTION 5.3 – SITE PLAN REVIEW

SECTION 5.3.A – PURPOSE

PG. 115

- Site plan review is required per § 5.4.C when reviewing a conditional use review application.

SECTION 5.3.B – STANDARDS *(the Board may wish to consider and impose appropriate safeguards, modifications and conditions relating to any of the following standards:)*

SECTION 5.3.B.1 – EXISTING SITE FEATURES

PG. 115

- The proposed decks appear to only impact areas of steep and very steep slopes (see Section 3.18 above); otherwise, the proposed decks appear to avoid, or conform with the requirements pertaining to the resources identified under Section 5.3.A.1.
- Should the Board discover any of the resources identified under Section 5.3.A.1, they have the ability to require one or more of the mitigation techniques:
 - Increased setback distances or undisturbed buffer areas between proposed development and identified resources.
 - The designation of building envelopes sited to exclude identified resource areas, and to limit the extent of site clearing and disturbance.
 - Permanent protection of identified resource areas as designated open space.

- The screening of development as viewed from public vantage points.
- The preparation and implementation of management plans for identified resources.

SECTION 5.3.B.2 – SITE LAYOUT & DESIGN

PG. 115

Mt. Mansfield Scenic Preservation and Soil & Water Conservation Districts. Site layout and design, to the extent physically feasible, shall, avoid adverse impacts to natural and scenic resources and environmentally sensitive areas within these districts, including those resources listed under Subsection B.1. The applicant should consider, and the DRB may require one or more mitigation measures listed under Subsection B.1 as necessary to minimize adverse impacts to identified resources in the vicinity of the proposed development.

- The proposed decks and second floor expansion seemingly will have a negligible impact to the natural and scenic resources, as well as the environmentally sensitive areas, within the Mt. Mansfield Scenic Preservation District.

SECTION 5.3.B.3 – VEHICLE ACCESS

PG. 116

- The property is currently accessed by one curb-cut via Ellsworth Meadow Lane.
 - No modifications to the existing curb-cut or driveway are anticipated.

SECTION 5.3.B.4 – PARKING, LOADING & SERVICE AREAS

PG. 117

- See Section 3.13 above.

SECTION 5.3.B.5 – SITE CIRCULATION

PG. 117

- Site circulation is expected to continue being consistent with site circulation patterns associated with the seasonal & single-family dwellings in the area.

SECTION 5.3.B.6 – LANDSCAPING & SCREENING

PG. 118

- No modifications to landscaping and screening are proposed.
- The proposed decks and second floor expansion will be located towards the northwest of the property, and is unlikely to be seen from Pleasant Valley Road and the majority of Ellsworth Meadow Lane.
 - The construction of the proposed decks and second floor expansion are consistent with similarly approved projects and will conform with other dwellings in the area.
- The Board should take note of the landscaping & screening techniques of other properties in the areas to determine if any measures under this section should be taken.

SECTION 5.3.B.7 – OUTDOOR LIGHTING

PG. 119

- See Section 3.11 above.

SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL

PG. 119

- The Board typically requires as a condition of approval that the Applicants adhere to the guidelines set out in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control.

SECTION 5.4 – CONDITIONAL USE REVIEW

SECTION 5.4.A – PURPOSE *(the standards and conditions should relate to the identification, avoidance and/or mitigation of potential impacts:)*

PG. 120

- Board approval is required for development that is proposed to occur in the property's setbacks per Sections 3.9, 5.5.B and 5.5.C.

SECTION 5.4.B – GENERAL STANDARDS

SECTION 5.4.B.1 – THE CAPACITY OF EXISTING OR PLANNING COMMUNITY SERVICES OR FACILITIES **PG. 121**

- The construction of the proposed decks and second floor addition is not anticipated to have an adverse impact on the existing or planning community services or facilities.
- Staff did not solicit input from the Road Foreman, UJFD or MMU.

SECTION 5.4.B.2 – THE CHARACTER OF THE AREA AFFECTED **PG. 121**

- The construction of the decks and proposed second floor addition are not anticipated to have an adverse impact on the character of the area, as the aforementioned project conforms with other development in the area – seasonal and single-family dwellings.
 - **Location:** the property is located in the Mt. Mansfield Scenic Preservation District, specifically in an area where the development consists of seasonal dwellings and single-family dwellings.
 - **Scale:** the scale of the proposed construction is consistent with the development that currently exists on the property and the surrounding properties.
 - **Type:** the proposed decks and second floor expansion will be attached to the seasonal dwelling, a permitted use in the Mt. Mansfield Scenic Preservation District.
 - **Density:** the proposed decks and second floor expansion will not increase the density in the area affected.
 - **Intensity:** the proposed decks and second floor expansion will negligibly change the intensity of the area affected.

SECTION 5.4.B.3 – TRAFFIC ON ROADS & HIGHWAYS IN THE VICINITY **PG. 121**

- The proposed decks and second floor expansion is unlikely to increase the traffic on the roads and highways in the vicinity, thus not resulting in an adverse impact.

SECTION 5.4.B.4 – BYLAWS IN EFFECT **PG. 122**

- Staff is unaware of any violations or noncompliance issues pertaining to the property.
- Should the Applicants wish to use the seasonal dwelling for year round use, they will be required to obtain approval from the Development Review Board (see Exhibit K).
- The proposed decks and second floor expansion will conform with the *Underhill Unified Land Use & Development Regulations* should they applicants get approval from the Board.

SECTION 5.4.B.5 – THE UTILIZATION OF RENEWABLE ENERGY RESOURCES **PG. 122**

- The proposed development is not anticipated to interfere with any sustainable use of renewable energy resources.

SECTION 5.4.C – SITE PLAN REVIEW STANDARDS **PG. 123**

- See analysis under Section 5.3 above.

SECTION 5.4.D – SPECIFIC STANDARDS *(The Board may consider the following subsections and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development:)*

SECTION 5.4.D.1 – CONFORMANCE WITH THE TOWN PLAN **PG. 123**

- The proposed development is consistent with the Town Plan.

SECTION 5.4.D.2 – ZONING DISTRICT & USE STANDARDS **PG. 123**

- The proposed decks and second floor expansion will comply with the Mt. Mansfield Scenic Preservation dimensional and use standards should the Board grant the conditional use approval under Section 5.5 below.

SECTION 5.4.D.3 – PERFORMANCE STANDARDS

PG. 123

- See Section 3.14 above.

SECTION 5.4.D.4 – LEGAL DOCUMENTATION

PG. 123

- Does not apply.

SECTION 5.5 – WAIVERS & VARIANCES

SECTION 5.5.A – APPLICATIONS & REVIEW STANDARDS

PG. 123

- The Applicants have asked for a dimensional waiver & variance to construct two decks, with associated stairs, as well as to expand the half floor to a second floor.
- Other waivers may be granted by the Board as they see appropriate.
 - The Board may waive application requirements, and site plan or conditional use review standards under Sections 5.3 and 5.4 that it determines are not relevant to the application.

SECTION 5.5.B – DIMENSIONAL WAIVERS

SECTION 5.5.B.1 – WAIVER REQUEST RATIONALE

PG. 124

- The Applicants have requested a waiver & variance to construct two decks and associated stair cases, as well as to expand the second floor (see Exhibits C & D), which will serve the seasonal dwelling.

SECTION 5.5.B.2 – APPLICABILITY OF WAIVER REQUEST

PG. 124

- The Applicants are proposing the southern-most deck within the waiver limitation boundary (between 37.5 ft and 75 ft. from the property line, see Exhibit O), the waiver criteria shall be applied for that deck.
- Since the Applicants proposal includes a deck (located to the north of the seasonal dwelling), as well as the expansion of the second floor, within 37.5 ft. from the east, side setback, a variance is required.

SECTION 5.5.B.4 – WAIVER REQUEST ELEMENTS

PG. 124

- | | |
|---|---|
| <p>a. <i>Element 1</i> – No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.</p> | <ul style="list-style-type: none"> • When reviewing the submitted site plan (see Exhibits O), siting the southern-most deck in an area that conforms to the setback requirements is unlikely since the seasonal dwelling is located entirely within the property's setbacks. • The recently completed septic system, Ellsworth Meadow Lane, and steep slopes, also create barriers to building within the approved building envelope (the setbacks), inevitably resulting in a project that encroaches upon the setback, thus requiring a waiver. |
| <p>b. <i>Element 2</i> – The reduced setback is not contrary to public health, safety and</p> | <ul style="list-style-type: none"> • Staff is unaware of any stated objectives and policies in the Town Plan where the |

welfare, stated objectives and policies of the Underhill Town Plan, or the intent of these regulations.

- c. *Element 3* – The waiver represents the minimum setback reduction necessary to allow for the proposed development.
- d. *Element 4* – Any potential adverse impacts resulting from reduced setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, other accepted mitigation measures.

construction of the proposed southern-most deck would be contrary.

- The Board should explore if there are any alternatives to siting the southern-most deck within the property's setbacks.
- The Board should evaluate if any mitigation measures are required as a result of the construction of the proposed deck.

SECTION 5.5.C – VARIANCES

SECTION 5.5.C.2 – VARIANCE REQUEST ELEMENTS

PG. 125

- a. *Element 1* – There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located.
- b. *Element 2* – Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property.
- c. *Element 3* – The unnecessary hardship has not been created by the applicant or appellant.

- The subject lot – 43 Ellsworth Meadow Lane, contains steep slopes, Ellsworth Meadow Lane, and a recently installed septic system (see Exhibit O), thereby limiting suitable areas for development.
- As depicted in Exhibit O, the area to situate development is narrow, and includes steep slopes and the recently installed septic system.
- The existing structure is already entirely in the property's setbacks.
- This is the hardest element to overcome: that the Applicant(s) is/are not creating the hardship. Simply by proposing the project, the Applicant(s) by definition, is/are creating the hardship.
- The unique circumstances described above substantially inhibit the applicant from construction any new additions or structures on the property.
- The circumstances presented are likely to exemplify a situation where the Applicants

- d. *Element 4* – The variance, if authorized will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources or be detrimental to the public welfare.
 - e. *Element 5* – The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.
- are not creating the unnecessary hardship themselves.
 - If granted, the variance is unlikely alter the character of the neighborhood or district, as the existing structure is screened from other properties by the surrounding forest.
 - The proposed construction is unlikely to substantially or permanently impair the appropriate use or development of adjacent properties.
 - The variance for the proposed project likely represents the least deviation from the regulations possible.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

- No Special Flood Hazard Areas are depicted on the existing lot (source: ANR Website); therefore, review under this Article is not required.

APPENDIX A – ROAD & DRIVEWAY STANDARDS

- Since no modifications to the existing driveway and curb cut are proposed, review under the Road Ordinance is unnecessary; an access permit is therefore not being sought at the direction of Staff (see Section 3.2 above for more information).